83 - 5836

No. 83 -

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ROBERT LEE WILLIE,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

RONALD J. TABAK
Hughes Hubbard & Reed
One Wall Street
New York, New York 10005
(212) 709-7735

ATTORNEY OF RECORD

JOHN CHARLES BOGER
16th Floor
99 Hudson Street
New York, New York 10013
(212) 219-1900

ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

1. Does the denial of sequestration during voir dire violate a defendant's right to a fair trial by a panel of impartial, indifferent jurors under the standard of Irvin v. Dowd, 366 U.S. 717 (1961), at least under circumstances where (a) there has been massive prejudicial pretrial publicity and (b) many potential jurors have heard counsel for another alleged participant indicate in court that the defendant committed the crime with which he is charged?

2. May a court constitutionally deny a motion to change venue under the standard of Murphy v. Florida, 421 U.S. 794 (1975), on the basis of a voir dire proceeding which purportedly overcomes a presumption of prejudice from pretrial publicity, even though some potential jurors gave misleading or inaccurate answers about their actual prejudice and (b) four actual jurors heard counsel for another alleged participant indicate in court that the defendant committed the crime with which he was charged?

3. Is there prejudice amounting to a denial of constitutional due process under the standard of Donnelly v. DeChristoforo, 416 U.S. 637 (1974), when a prosecutor asserts in closing argument that the defendant should be given the death sentence because (a) the law says that if the jurors had come to the scene while the crime was being committed, they would have been right to kill the defendant and (b) if the defendant is given a life sentence, the jury will be telling him that his life is more valuable than the victim's?

4. May the Louisiana Supreme Court constitutionally uphold a death sentence on the basis of a proportionality review limited to one judicial district under the standard of Maggio v. Williams, ___ U.S. ___, 52 U.S.L.W. 3363 (U.S., Nov. 7, 1983) (per curiam), where life sentences, not death sentences, have been imposed in the only similar cases from that judicial district?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 83-

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ROBERT LEE WILLIE,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA

Petitioner Robert Lee Willie respectfully prays that a writ of certiorari issue to review the judgment of the Louisiana Supreme Court in this case.

CITATION TO OPINIONS BELOW

The opinion of the Louisiana Supreme Court tentatively affirming Mr. Willie's conviction is reported at 410 So.2d 1019 (La. 1982) and is submitted herewith as Appendix 1. The opinion of the Louisiana Supreme Court affirming his conviction and death sentence is reported at 436 So.2d 553 (La. 1983) and is submitted herewith as Appendix 2.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered in early September 1983. By order dated November 1, 1983, Justice White granted an application extending petitioner's time to file this

petition to and including November 30, 1983. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the Constitution of the United States, which provides in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right to * * * an impartial jury;"

the Eighth Amendment to the Constitution of the United States, which provides in relevant part:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;"

and the Fourteenth Amendment to the Constitution of the United States, which provides in relevant part:

> "[N]or shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner Robert Lee Willie was convicted of first degree murder in the Twenty-Second Judicial District Court for Washington Parish, Louisiana, and was sentenced to death. On appeal to the Louisiana Supreme Court, Mr. Willie's conviction was conditionally affirmed[1] but his sentence was vacated because the prosecutor's closing argument at the sentencing proceeding was held to have denied Mr. Willie a fundamentally fair trial. State v. Willie, 410 So.2d 1019, 1032-37 (La. 1982). On remand to the trial court, Mr. Willie was again sentenced to death. On appeal, the Louisiana Supreme Court unconditionally affirmed Mr. Willie's conviction and affirmed his sentence. State v. Willie, 436 So.2d 553 (La. 1983). Petitioner's co-indictee, Joseph Vaccaro, was tried

---

1. The condition relating to the affirmance concerned a matter which is not the subject of this petition.

separately in a proceeding which occurred simultaneously with Petitioner's trial, in a different courtroom in the same courthouse. Mr. Vaccaro was found guilty of first degree murder but received a life sentence.

The Massive, Prejudicial Pretrial Publicity

Both Mr. Willie's trial and his second sentencing proceeding took place in Washington Parish. All jury members came from Washington Parish, a rural area with a population in 1980 of 44,207. (Bureau of the Census, U.S. Department of Commerce, 1980 Census of Population, "Number of Inhabitants, Louisiana," at 20-8 (1980), submitted herewith as Appendix 3.)

Prior to their trials, Mr. Willie and his co-indictee, Mr. Vaccaro, moved for a change of venue. In support of that motion, the defendants presented evidence of massive, highly prejudicial, pretrial publicity. This evidence included a series of articles from the Bogalusa Daily News, a newspaper with a circulation of 8,500 in Washington Parish (Vol. V of VII, at 17-18; Vol. III of VII, at 338-73, 375-80),[2] and which was read by the vast majority of all prospective and actual jurors at Mr. Willie's trials. Among these were 16 front-page stories between June 3 and August 13, 1980.

These articles did not merely report on the murder of Faith Hathaway, the crime for which Mr. Willie has been convicted and sentenced to death. They also included detailed accounts of another crime committed by Messrs. Willie and Vaccaro three days after Ms. Hathaway's murder, viz., the kidnapping of a 16-year-old

---

2. References to "Vol. __ of VII, at __-__" are to pages in a numbered volume of the seven-volume record in the Louisiana Supreme Court of proceedings relating to Mr. Willie's trial. References to "Vol. __ of II, at __-__" are to pages in a numbered volume of the two-volume record in the Louisiana Supreme Court of proceedings relating to the proceedings on remand and in Mr. Willie's second sentencing proceeding. The referenced page numbers are those in the Louisiana Supreme Court's record, which may differ from the page numbers originally associated with a document.

girl and her boyfriend; their transportation of the kidnap victims across state lines to a wooded area where the girl was raped and where the defendants took the boyfriend out of his car trunk, tied him to a tree, shot him twice in the head, slashed his throat, and left him to die; the defendants' return to Louisiana; a second rape of the girl; defendants' release of the girl, after a third man talked them out of murdering her; the boyfriend's miraculous survival and difficult road to recovery; and Messrs. Willie and Vaccaro's guilty pleas to federal conspiracy and kidnapping charges relating to those events and their receipt of consecutive life sentences. The articles repeatedly linked together the foregoing events with the murder of Faith Hathaway, who was reported to be a friend of the 16-year-old girl who was raped and kidnapped.

Moreover, the Bogalusa Daily News articles frequently Willie and Vaccaro had "confessed" to having raped and killed Faith Hathaway. This "information" was attributed to Michael Varnado, an investigator employed by the District Attorney's office. Such reports seriously mischaracterized Mr. Willie's statement. He never said that he raped Ms. Hathaway, and he persistently and emphatically insisted that he did not kill her and would be willing to take a lie detector test to prove so. (Vol. I of VII, at 67, 71, 76; see Appendix 10 submitted herewith.)

As the trials neared, there were many additional articles in the Bogalusa Daily News, including a front-page article on October 15, 1980, five days before trial, reporting that the defendants were going to seek "to suppress taped confessions which the state claims to have." (Vol. III of VII, at 375, 379-80.) The defendants did not introduce into evidence any newspaper articles appearing between October 15 and October 20, when the trials began, but three members of Mr. Willie's jury said they had recently read or heard about the case. One of them had heard about it on the

radio on the morning of the trial. (Vol. VI of VII, at 216-17, 255-57.) Several veniremen who did not become jurors also said they had read or heard about the case recently. (Vol. VI of VII, at 146-48, 197, 214-15, 251, 276-77).[3]

In addition to the articles from the Bogalusa Daily News, the defendants submitted similar articles from several other newspapers and transcripts from television and radio stations. The newspapers included the Times-Picayune -- which some jurors said they read (Vol. VI of VII, at 277-78), the Enterprise -- which had a circulation of 2,500-2,600 in Washington Parish and which one of Mr. Willie's jurors read (Vol. V of VII, at 12-13; Vol. VI of VII, at 276-77; Vol. III of VII, at 322-25), and the ERA Leader -- which had a circulation of 3,000 in Washington Parish (Vol. V of VII, at 15-16; Vol. III of VII, at 326-37).

The Times-Picayune's articles included several detailed accounts of Mr. Willie's prior arrests, convictions and confinements. That newspaper also reported that Mr. Willie's father was serving time for attempted murder and had previously killed another man. The newspaper's source for these criminal histories was a sheriff's department official. (Vol. II of VII, at 170, 178, 265.)

One of the front-page articles in the Enterprise attributed to the District Attorney the statement that "We owe it to the citizens of St. Tammany and Washington parishes to make sure that these two animals do not walk our streets again." (Vol. III of VII, at 322; Vol. V of VII, at 12-13, 57-60.) Television coverage included a report that:

> "Officials working on the case say the rape and murder of Faith Hathaway was so horrible that it shocked even the most hardened lawmen. Already they're calling it the

---

3. Several other jurors and veniremen said they had read "everything" that had appeared in the media or the newspaper about the case.

worst crime in the history of Washington Parish." (Vol. I of VII, at 130-31.)

Radio coverage indicated that this "has already been billed as the trial of the decade on the northshore." (Vol. I of VII, at 145.)

The defendants also called an expert psychiatrist, William Bloom, who testified that people might lie at the voir dire out of a feeling that the defendants were guilty "and that justice could only be done if they got on the jury." (Vol. IV of VII, at 524-25.) Dr. Bloom added that one person had seriously volunteered to him that he would lie to get on the jury in this case (id. at 525-26, 534), that all 20 of the people with whom he had discussed the case had said the defendants were guilty (id. at 525), that none of the 74 or 75 people whom Mr. Willie's attorney had surveyed felt the defendants were not guilty (id. at 531-32), and that the passage of time would not cause jurors to forget very vivid matters such as the key facts of this case (id. at 528-29).

The trial judge repeatedly declined to rule on defendants' motion to change venue until after the voir dire (Vol. IV of VII, at 550-51; Vol. V of VII, at 102-03; Vol. VI of VII, at 134-35).

The Conduct of the Voir Dire

Messrs. Willie and Vaccaro were tried separately but simultaneously in the same courthouse. Mr. Willie's trial took place downstairs while Mr. Vaccaro's was occurring upstairs.

Mr. Willie's attorney moved for sequestration of the entire panel prior to the voir dire and for individual sequestered voir dire. However, these motions were denied (Vol. VI of VII, at 134-35), as were Mr. Vaccaro's similar motions. Instead, the voir dire proceedings in both trials took place in open court. When more veniremen were needed at Mr. Willie's trial, people who had been peremptorily challenged or had not yet been questioned at Mr.

Vaccaro's voir dire were sent downstairs to Mr. Willie's trial. Meanwhile, the people who were peremptorily challenged at Mr. Willie's trial were sent up to Mr. Vaccaro's trial. Jury selection in both trials was completed in a single day.

As summarized by the Louisiana Supreme Court, 47 of the 52 prospective jurors in Mr. Willie's trial had read or heard about the case. Ten of them said they had a preconceived opinion, of whom six were successfully challenged for cause. State v. Willie, 410 So.2d 1019, 1024 (La. 1982). However, the Louisiana Supreme Court's decision fails to mention several other crucial facts about the voir dire, which are summarized below.

(i) Misleading Or Inaccurate Answers About Actual Prejudice By Veniremen Whom Petitioner Was Forced To Challenge Peremptorily

Petitioner Robert Lee Willie was given only the normal number of peremptory challenges, 12, for cases for which conviction results in (at least) mandatory imprisonment. His attorney's request for additional peremptory challenges was denied. (Vol. VI of VII, at 303-04.)

Two of these peremptory challenges were used against veniremen whose answers were either misleading or inaccurate. That is clear from a comparison of their answers at the Willie voir dire with their answers on the same day at the Vaccaro voir dire.[4]

Mrs. Erroil L. Jenkins said at the Willie voir dire that she had an opinion but that she could put her opinion aside and be fair. She said she understood that she had to ignore everything

---

4. This Court can take judicial notice of the Vaccaro voir dire transcript, pursuant to Fed. R. Ev. 201. Green v. Warden, 699 F.2d 364, 368-69 (7th Cir.), cert. denied, 103 S. Ct. 2436 (1983); St. Louis Baptist Temple, Inc. v. Federal Deposit Insurance Co., 605 F.2d 1169, 1172-74 (10th Cir. 1979). That would be particularly justified here, since the Louisiana Supreme Court has cited the conduct of Mr. Vaccaro's jury in ruling that Mr. Willie's sixth amendment right to a fair jury was not violated. State v. Willie, 410 So.2d 1019, 1024 (La. 1982).

she had read and heard. (Vol. VI of VII, at 249-50.) Mr. Willie's counsel used one of his 12 peremptory challenges against her. Thereafter, at the Vaccaro voir dire, Mrs. Jenkins eventually said that she did not believe that she could put her preconceived ideas out of her mind and decide the case as fairly and impartially as if she had never heard about the case before. Mr. Vaccaro's attorney then succeeded in challenging her for cause. (Vaccaro Vol. VI, at 319-20, submitted herewith with Willie Vol. VI of VII, at 249-50, as Appendix 4.)[5]

Earlier, Mr. Willie's attorney used up another of his 12 peremptory challenges against Mrs. Bobby Sue Thomas, who said first that she did not know if she could be fair, because she had an opinion, but later said that she believed she could be fair despite having an opinion. (Vol. VI of VII, at 149-50, 189.) Thereafter, Mrs. Thomas was asked at Mr. Vaccaro's trial whether she had formed an opinion about the defendant's guilt or innocence, and she said she had not. (Vaccaro Vol. V, at 125, 129-30, submitted herewith with Willie Vol. VI of VII, at 149-50, 189, as Appendix 5.) It is reasonable to infer that Mrs. Thomas was an example of the inalterably biased juror about whom Dr. Bloom had testified, i.e., she was so biased against both defendants and so determined to get a chance to find at least one of them guilty that she understated the degree of her bias at Mr. Willie's trial and then denied bias altogether in a final attempt to get on Mr. Vaccaro's jury.[6]

---

5. References to "Vaccaro Vol. _, at _-_" are to pages in volumes V and VI of the eight-volume record on appeal in the Louisiana Supreme Court in State v. Vaccaro, No. 81 KA 0660.

6. Mr. Willie's attorney used up two other peremptory challenges against Mrs. Judy F. Morris, who kept up with the case in the newspaper and on television and said "they wouldn't have arrested him unless they had some evidence against him in the first place to arrest him" (Vol. VI of VII, at 258-59, submitted herewith as Appendix 6) and Mr. George F. Thomas, who said that even if the State did not prove guilt beyond a reasonable doubt, he would expect Mr. Willie to prove he was not guilty (Vol. VI of VII, at 198), but who then agreed with the judge that he would weigh the evidence presented by the State before he would "expect anything" (id. at 200, submitted herewith with pp. 198 and 199 as Appendix 7).

(ii) Procedure Under Which Four Of Petitioner's Jury Members Heard Him Accused Of The Crime By Counsel For Another Alleged Participant

After using up 11 of his 12 peremptory challenges (four of which have been discussed in the text and footnote 6 on page 8), petitioner's counsel was confronted with a new panel of 14 veniremen. At least 11 of them had been at Mr. Vaccaro's voir dire, where 1 of them had been peremptorily challenged by the prosecution and 4 by the defense. Mr. Willie's attorney attempted to challenge for cause 1 of these latter 4 veniremen, Homer O. Branch, Jr. after Mr. Branch said that he had followed the case closely, thought what he saw was "pretty terrible," guessed he had made up his mind, was "pretty sure" he could ignore what he had read, and felt he could overcome his opinion and decide the case solely on the evidence. (Vol. VI of VII, at 298-99, submitted herewith as Ex. 8.) After his objection for cause was overruled, Mr. Willie's counsel felt compelled to use his final peremptory challenge against Mr. Branch. Faced with that predicament, Mr. Willie's counsel asked for but was denied additional peremptory challenges. (Vol. VI of VII, at 303-04.) As a result, 8 of Mr. Willie's 12 jurors came from the last panel of 14. Two of these jurors (Mrs. Edwards and Mr. Brumfield) had been peremptorily challenged by Vaccaro's attorney. (Vaccaro Vol. V, at 120, 122.)

It is not certain when those 2 jurors left the Vaccaro trial's courtroom. However, the record does show that 4 of the members of the jury which convicted Mr. Willie were still present at the Vaccaro trial when Vaccaro's attorney indicated that Mr. Willie had killed Faith Hathaway by slashing her throat, whereas Mr. Vaccaro was just an innocent bystander. Mrs. Burt D. Sharp, Mr. Thomas Craig Wilkins (also known as Craig Thomas), Mr. Julius A. Savant and Mr. Walter J. Fournet were all sent down from the Vaccaro courtroom to the Willie trial at page 188 of the Vaccaro

voir dire, and they all became members of Mr. Willie's jury (Vol. VI of VII, at 305). Yet, only a few pages earlier, at page 176, Vaccaro's attorney had made the following statement:

> "Let me give you another example, let's say Mr. Vaccaro was there and let's say he is drunk or on pills or whatever, and not himself, and let's say that Robert Willie says hold her hand and Joe doesn't know what is going on, he holds her hand and Mr. Willie comes up to her and kills her. Mr. Vaccaro didn't know he was going to kill her.
>
> "My question to you is, in that situation, would you automatically vote first degree murder on a case like that?" (Vaccaro Vol. V, at 176.)

Then, just three pages before these jurors left for the Willie trial, they heard Vaccaro's lawyer say:

> "It is not enough to prove that Robert Willie killed Faith Hathaway, but the State must prove that Joseph Vaccaro was a principal and that he intended it and that he participated in it and that he is guilty himself." (Id. at 185; submitted herewith with pages 176 and 188 and with Willie Vol. VI of VII, at 305, as Appendix 9.)

These same four jurors later heard Mr. Willie's statement introduced at his trial. That statement repeatedly emphasized that it was Vaccaro, not Willie, who had slashed Ms. Hathaway to death. Mr. Willie insisted that he had been shocked by Vaccaro's actions and had never expected Ms. Hathaway to be killed. (Vol. I of VII, at 64, 67, 75-76, submitted herewith as Appendix 10.) The jurors also heard Mr. Willie's attorney assert in closing argument that the only pertinent evidence in the case (i.e., Willie's statement) showed that Vaccaro cut her throat, and that Willie was totally surprised when Vaccaro killed her. In short, Willie's defense was that he had neither killed nor intended to kill Ms. Hathaway (Vol. VII of VII, at 520, 526-27, submitted herewith as Appendix 11.) However, because of the manner in which the voir dire had been conducted, these four jurors had previously heard Vaccaro's attorney give a diametrically opposite description of what had happened.

The Prosecutor's Two Unconstitutional Arguments
In Support Of The Death Sentence

At Mr. Willie's second sentencing proceeding, the prosecutor presented (inter alia) two unconstitutional arguments in urging the jury to sentence Mr. Willie to death. The first was:

> "Now let me ask you this, and this is the law. Suppose that through an act of God that one of you at the moment that Robert Willie is between her legs and that Joe Vaccaro is holding her hands, that one of us walked up on that scene, nude girl, blindfolded, probably screaming, scared to death, and God willed it that we had a gun, I think almost everyone of us without hesitation would have blown them both away and that we'd have grabbed that little girl and if we had a blanket we'd have wrapped her, and we would have hugged her, and we would have been proud of ourself that we saved her life, that we kept her from being raped, and we wouldn't have had one bit of remorse that we used the gun and we'd have been right under the law. The law says that we would have been right to do exactly what we did. Well, if we have that right and the law says that we have that right, as it does, then we also have the right to impose the ultimate penalty on Robert Willie." (Vol. II of II, at 188-89, submitted herewith as Appendix 12.)

Under that misstatement of the law, the death sentence should be imposed whenever a citizen would be justified in using deadly force to stop a crime from occurring.

The prosecutor concluded his argument as follows:

> "Why is the only punishment death? Because if we as a community, if you as a group of citizens are going to say that life is valuable, you are going to say that Faith Hathaway had a right to live. If you believe that that little girl had a right to live, a right to go about her life, she may have never married a senator or president, but she was trying to do something constructive with her life. She was going in the service. It's not easy for somebody to do. But if you are going to say that she had a right to live, which she certainly did, and that Robert Willie didn't have a right to take her life, then as punishment for Robert Willie taking her life, you're going to give him life, where is the justice of it? If you're going to hold anything holy about the life of Faith Hathaway, if you're going to say that it has any value at all, you've got to say the death penalty, because otherwise you're saying Robert Willie, your life is more valuable than Faith Hathaway's, your life means more than Faith Hathaway. I certainly hope that you can't say that. The evidence certainly doesn't indicate that his

> life is even close to the value to that of Faith Hathaway, but even being putting a value on it, the two lives. He took her life. He deserves that." (Vol. II of II, at 192-93, submitted herewith as Appendix 13.)

Under that misstatement of the law, the death sentence should be imposed whenever the convicted defendant's life is no more valuable than the victim's. The trial judge gave absolutely no curative instructions in response to these arguments but instead went directly into his prepared charge.

The Louisiana Supreme Court's Proportionality Review Upholding This Death Sentence Despite Finding Only Life Sentences In Similar Cases

The Louisiana Supreme Court is required to determine whether a death sentence "is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." Louisiana Supreme Court Rule 28, § 1(c), adopted pursuant to La. Code Crim. Proc. Ann. Art. 905.9 (West Supp. 1983) (submitted herewith as Appendix 14). The Louisiana Supreme Court purported to make such a determination in Mr. Willie's case. Confining itself only to the judicial district in which the trial was conducted, the Court found that there was only one case with somewhat similar facts. In that case, the defendant was given a life sentence, but the Louisiana Supreme Court speculated that because the defendant was "a person with mental problems * * * the jury may have concluded that his responsibility was diminished * * *." State v. Willie, 436 So.2d 553, 559 (La. 1983). The Court then concluded that:

> "Considering the sentence review memoranda submitted by both the state and the defendant, and the paucity of similar cases, the sentence imposed on the defendant, Robert Lee Willie, cannot be said to be disproportionate." (Id.)

The Louisiana Supreme Court recognized earlier in its opinion that Mr. Vaccaro, Mr. Willie's co-defendant, had received a life sentence for the same crime, but it found that

> "A death sentence is not necessarily disproportionate because one defendant in a factually similar

> case received life imprisonment. * * * While Willie may have been less culpable than his criminal partner, there is nothing to indicate that his role was a subsidiary one. * * *" (Id. at 558 (citations omitted) (emphasis in original).)

Thus, the Louisiana Supreme Court found that Mr. Willie's death sentence was not disproportionate even though it found no similar case in which a death sentence had been imposed. The Court did not choose to look at cases from other parts of the state even though in the only two similar cases it found, including the very same case, the defendants were given life imprisonment.

HOW THE FEDERAL QUESTIONS WERE RAISED AND DECIDED BELOW

1. On October 20, 1980, immediately before the voir dire began, Petitioner sought sequestration of the entire panel and moved for individual sequestered voir dire. Those motions were denied. (Vol. VI of VII, at 134-35.) Before trial testimony began, Petitioner objected to the manner in which the voir dire had been conducted. His counsel asserted that a fair jury had not been selected because he had not been able to question jurors about the specifics of the publicity as much as he felt necessary. That was due to the failure to sequester the veniremen individually when they were questioned. The objection was overruled. (Vol. VI of VII, at 321.) Following the trial, Petitioner raised the sequestration issue in a motion for a new trial, which was denied. (Vol. II of VII, at 306-08, 313-14.)

On appeal, the Louisiana Supreme Court held that Mr. Willie had failed to show that the trial judge had misused his discretion when he denied Mr. Willie's motion for a sequestered voir dire. State v. Willie, 410 So.2d 1019, 1024-25 (La. 1982). It also rejected Petitioner's argument "that an error patent on the face of the record might require reversal of the conviction," holding that "A review of the record shows no errors patent." Id., at 1032.

2. Petitioner moved for a change of venue and repeatedly sought a ruling thereon prior to the trial. (Vol. IV of VII at 550-51; Vol. V of VII, at 102-03; Vol. VI of VII, at 135.) On all of these occasions, the judge refused to rule until after the voir dire. (Id.) Following the voir dire, the trial judge denied the motion to change venue, and Petitioner objected to that ruling. (Vol. VI of VII, at 321.) After the trial, Petitioner raised the venue issue in his motion for a new trial. The motion was denied. (Vol. II of VII, at 306-07, 313-14.)

On appeal, the Louisiana Supreme Court stated that it had made an independent evaluation of the complete trial record in considering the venue issue. The Court indicated that there had been a thorough voir dire and that while virtually all the veniremen had read or heard about the case, only 10 of the 52 veniremen had said they had formed an opinion. After noting the 6 successful challenges for cause and Petitioner's 12 peremptory challenges, the Court concluded that each of the jurors selected was qualified under the standard set forth in Irvin v. Dowd, 366 U.S. 717 (1961). The Court added that the fact that the verdict in Vaccaro's simultaneous trial was a life sentence, not a death sentence, "reflects some degree of discernment in assessing the evidence * * *." State v. Willie, 410 So.2d 1019, 1024 (La. 1982). The Court completed its discussion by stating that most of the publicity was straight news reporting almost two months before trial; that government officials were minimally responsible for the publication of objectionable material; and that there were no other inflammatory factors such as racial strife, the murder of law enforcement officials "or an egregious event such as a televised confession." Id. (citations omitted.) In summarizing the jury selection and comparing the actions of the Willie and Vaccaro juries, the Louisiana Supreme Court failed to mention any of the egregious facts discussed at pages 7-10, supra.

3. The Louisiana Supreme Court held that there was "no indication or contention that passion, prejudice or any arbitrary factor entered into the death sentence" given Mr. Willie at his second sentencing proceeding. State v. Willie, 436 So.2d 553, 559 (La. 1983). The opinion does not discuss the prosecutor's closing argument. However, the Louisiana Supreme Court had the power to review that argument and to vacate the death sentence because of it, notwithstanding defense counsel's failure to object to it at trial and his failure to advert to it on appeal. Indeed, it was the prosecutor's injection of arbitrary factors in argument at the same point in Petitioner's original sentencing proceeding that had caused the State Supreme Court to vacate the original death sentence, even though defense counsel had failed either to object at trial or to mention the prosecutor's closing argument on appeal. See State v. Willie, 410 So.2d 1019, 1036 & n.4 (La. 1982) (Lemmon, J., concurring).

4. The Louisiana Supreme Court held, after purporting to conduct a proportionality review, that Petitioner's death sentence was not disproportionate. It also rejected Petitioner's argument that his sentence was excessive, in view of Mr. Vaccaro's life sentence for exactly the same crime. State v. Willie, 436 So.2d 553, 557-59 (La. 1983). As described at pages 12-13, supra, the Louisiana Supreme Court found the death sentence not to be excessive or disproportionate based on a review of the first degree murder cases from one judicial district. In the only two similar cases, the defendants were given life sentences. No one in a similar case had received the death sentence.

REASONS FOR GRANTING THE WRIT

This Court has never considered whether, under circumstances of massive, prejudicial pretrial publicity, the Constitution requires that voir dire be conducted in a special way, such as sequestered questioning of individual veniremen. That issue has

arisen frequently in recent years, but the federal circuit courts have not agreed upon clear Constitutional guidelines which state and federal courts must follow. Mr. Willie's voir dire proceedings were conducted in a manner which caused the jury to be inherently prejudiced against him. Hence, this case presents an appropriate opportunity for this Court to articulate the Constitutional requirements for selecting a fair, unbiased jury in a highly publicized case.

This case also affords this Court an opportunity to clarify the standards to be applied in determining a separate Constitutional issue, viz., under what circumstances may a presumption of jury prejudice warranting a change of venue be successfully rebutted by the fact that only a minority of veniremen said they had an opinion about the case? In the wake of Irvin v. Dowd, 366 U.S. 717 (1961), and Murphy v. Florida, 421 U.S. 794 (1975), many courts have considered the percentage of veniremen who express a bias to be an extremely crucial factor. However, as the present case starkly demonstrates, such percentages present a very incomplete picture when veniremen give false or misleading answers or are affected by an inherently prejudicial circumstance about which the trial judge and defense counsel are unaware. Accordingly, this petition presents an appropriate occasion to address a serious Constitutional question not determined by Irvin or Murphy.

A third substantial Constitutional question raised by this petition concerns the circumstances under which highly prejudicial statements by a prosecutor in closing argument in a capital sentencing proceeding may deny the defendant a fundamentally fair trial. That due process issue has never been squarely addressed by this Court, but it has arisen frequently in recent years. This petition raises the Constitutional issue in a substantial way, because it concerns a prosecutor's remarks which invited the jury to impose the death sentence on the basis of factors

which no state could constitutionally incorporate in a death sentence statute.

The final serious question raised by this petition is whether a state may constitutionally impose the death sentence on the basis of a limited proportionality review in which life, not death, sentences were imposed in the only similar cases. That question is similar, but not identical, to the issue which this Court will consider in Pulley v. Harris, cert. granted, 103 S.Ct. 1425 (1983). Hence, even if this Court does not grant certiorari in this case, it should defer a decision on this petition pending its decision in Pulley, supra.

I.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THE DENIAL OF SEQUESTRATION DURING VOIR DIRE VIOLATES A DEFENDANT'S RIGHT TO A FAIR TRIAL BY A PAENL OF IMPARTIAL, INDIFFERENT JURORS UNDER THE STANDARD OF IRVIN v. DOWD, 366 U.S. 717 (1961), AT LEAST UNDER CIRCUMSTANCES WHERE (a) THERE HAS BEEN MASSIVE, PREJUDICIAL PRETRIAL PUBLICITY AND (b) MANY POTENTIAL JURORS HAVE HEARD COUNSEL FOR ANOTHER ALLEGED PARTICIPANT INDICATE IN COURT THAT THE DEFENDANT COMMITTED THE CRIME WITH WHICH HE IS CHARGED

This Court has never considered the Constitutional requirements for special modes of voir dire, such as sequestered questioning of each venireman, that may be necessary when there has been massive, prejudicial pretrial publicity. The Court has looked instead at veniremen's answers regarding their preconceived opinions and their ability to be fair, in determining that "Where one's life is at stake -- and accounting for the frailties of human nature * * * the finding of impartiality does not meet constitutional standards." Irvin v. Dowd, 366 U.S. 717, 727-28 (1961) (finding constitutional standards not met); see Murphy v. Florida, 421 U.S. 794, 799-803 (1975) (finding constitutional standards met).

The federal circuit courts have dealt with the constitutionality of particular voir dire methods, but they have not agreed upon a uniform constitutional standard. For example, in United States v. Hawkins, 658 F.2d 279 (5th Cir. Unit A 1981), the Fifth Circuit held that in the wake of extensive, prejudicial pretrial publicity to which most veniremen had been exposed, due process was denied when the trial judge merely inquired of the panel en masse (a) whether anyone had formed an opinion about the defendants' guilt or innocence and (b) whether anyone felt that he could not be fair and impartial or would be influenced by the publicity. Id. at 282, 285. The Fifth Circuit held that more than such abbreviated questioning was needed in order for the trial judge to determine for himself whether the potential jurors were impartial. Id. at 285. However, the Fifth Circuit did not set forth any clear standard regarding how such constitutional violations should be avoided. Instead, the court said that when "time consuming, probing, preferably individual voir dire" is constitutionally necessary, it need not "always be conducted apart from the other jurors." Id; accord, United States v. Davis, 583 F.2d 190, 196-97 & nn. 8-9 (5th Cir. 1978) (Sequestered examination of individual jurors, in accordance with recommendations of the ABA Standards Relating to Fair Trial and Free Press § 3.4(a) (Approved Draft, 1968), "is sometimes preferable" but "is not necessarily required.")[7]

The First Circuit has expressed a preference for sequestered questioning of veniremen where there is a strong "possibility that jurors have been exposed to potentially prejudicial material." Patriarca v. United States, 402 F.2d 314, 318 (1st Cir. 1968) (dictum), cert. denied, 393 U.S. 1022 (1969). However, that

---

7. In Johnson v. Beto, 337 F.Supp. 1371, 1379 (S.D. Texas), aff'd, 469 F.2d 1396 (5th Cir. 1972) (per curiam), failure to allow sequestered individual questioning of veniremen was held to have denied the defendant due process.

court has not decided whether such a procedure may ever be constitutionally required.

Most recently, the Sixth Circuit's en banc decision in United States v. Blanton, ___ F.2d ___, Nos. 81-5643-45 (6th Cir. Sept. 28, 1983) (en banc) (available Nov. 29, 1983 on Lexis, Genfed library, Cir. file), considered the constitutional principles applicable to voir dire proceedings in a highly publicized case. However, no clear standard was enunciated. Instead, the court held that the voir dire was constitutional because of six factors, including (a) the trial judge's sensitivity to any hint of bias and liberal granting of challenges for cause and (b) the substantial increase in the defense's peremptory challenges. Id. at 8.

Mr. Willie's case provides a clear opportunity for this Court to enunciate for the first time the Constitutional requirements for special voir dire methods in cases involving massive, prejudicial pretrial publicity. As set forth above, the publicity here involved not only details of the sensational murder with which Willie and Vaccaro were charged; it also included (a) erroneous reports that both of them had confessed to killing the victim, (b) detailed accounts of both defendants' criminal histories and that of Mr. Willie's father, (c) gruesome accounts of the kidnapping, rape and attempted murder in which Willie and Vaccaro were also involved three days after Ms. Hathaway's murder, (d) their guilty pleas to federal charges, and their consecutive life sentences, and (e) the District Attorney's reported statement that the defendants were "animals." In view of the continuation of the publicity right up until the day the trial began, and the fact that the trial was held in a rural parish with about 40,000 residents, this case cried out for a special method of voir dire.

Unfortunately, the only thing that was really special about the voir dire method was the system whereby veniremen who were peremptorily challenged or no longer needed at Vaccaro's

trial were sent down to participate in Willie's trial. Far from sequestering the entire panel and having sequestered, individual questioning of each venireman, the judge followed a procedure under which four of the jurors who convicted Mr. Willie heard much of the voir dire in Mr. Vaccaro's case as well as some of the voir dire in Mr. Willie's case. The failure to adopt the sequestered voir dire procedure which Mr. Willie had sought thus resulted in four of his trial jurors hearing Vaccaro's lawyer indicate in court that Mr. Willie had killed Ms. Hathaway. (See pages 9-10, supra.)

This voir dire procedure must be held unconstitutional because it resulted in the kind of inherent prejudice that has been held to require reversals of numerous other convictions. When four of Mr. Willie's jurors heard his co-defendant's lawyer implicate him, that raised the same kind of Confrontation Clause problem as in Bruton v. United States, 391 U.S. 123 (1968); only here the problem was even worse because there was no curative instruction.[8] Indeed, Mr. Willie's constitutional rights were violated in an even more egregious fashion than in Turner v. Louisiana, 379 U.S. 466 (1965), in which key prosecution witnesses had custody of the jurors. In Turner, there was no proof that any improper remarks were actually made to the jury.

Mr. Willie was at least as prejudiced as the defendants in Marshall v. United States, 360 U.S. 310 (1959) (federal prosecution), Goins v. McKeen, 605 F.2d 947 (6th Cir. 1979) (state prosecution), and United States v. Williams, 568 F.2d 464 (5th Cir. 1978) (federal prosecution), in which jurors read or saw prejudicial stories about the defendant during the trial. In all three cases, unlike Mr. Willie's case, the affected jurors were questioned by

---

8. In view of Mr. Willie's persistent emphatic denials that he either killed or intended to kill Ms. Hathaway, Parker v. Randolph, 442 U.S. 62 (1979), is inapplicable here.

the trial judge and assured him that they could be fair. Nevertheless, all the convictions in those cases were reversed because of the inherent prejudicial effect of publicity occurring once courtroom proceedings had begun. Similarly, Mr. Willie was inherently prejudiced by the accusation against him by Vaccaro's defense counsel in the upstairs courtroom, but since he, his counsel and the trial judge were all in the downstairs courtroom at the time and because Mr. Willie's counsel was not allowed to question the four affected jurors (or anyone else) in a sequestered fashion, they did not find out what those four jurors had heard.

In short, the consequence of the voir dire method used in Mr. Willie's case was the same as that in another Louisiana case, Rideau v. Louisiana, 373 U.S. 723, 726 (1963): "Any subsequent court proceedings * * * could be but a hollow formality." At least some such unconstitutional trials will be avoided if this Court takes advantage of the opportunity presented by this petition to set forth clear Constitutional standards for conducting voir dire proceedings in highly publicized cases.

II.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER A COURT MAY CONSTITUTIONALLY DENY A MOTION TO CHANGE VENUE UNDER THE STANDARD OF MURPHY v. FLORIDA, 421 U.S. 794 (1975), ON THE BASIS OF A VOIR DIRE PROCEEDING WHICH PURPORTEDLY OVERCOMES A PRESUMPTION OF PREJUDICE FROM PRETRIAL PUBLICITY, EVEN THOUGH (a) SOME POTENTIAL JURORS GAVE MISLEADING OR INACCURATE ANSWERS ABOUT THEIR ACTUAL PREJUDICE AND (b) FOUR ACTUAL JURORS HEARD COUNSEL FOR ANOTHER ALLEGED PARTICIPANT INDICATE IN COURT THAT THE DEFENDANT COMMITTED THE CRIME WITH WHICH HE WAS CHARGED

In both Murphy v. Florida, 421 U.S. 794 (1975), and Irvin v. Dowd, 366 U.S. 717 (1961), a major factor in this Court's decision on the fundamental fairness of the trial was the percentage of veniremen who indicated that they were biased as a result of pretrial publicity. In Irvin, almost 90% of the prospective

jurors had an opinion about defendant's guilt, and a total of 268 of the 430 veniremen were excused on challenges for cause. Such opinions about defendant's guilt also pervaded the selected jury, and this Court held that the defendant had been denied a trial by an impartial jury. Id., 366 U.S. at 727-28. In Murphy, this Court held that the defendant's constitutional rights had not been violated. It distinguished Irvin, by pointing to the contrast between the statistics in Irvin mentioned above and the fact that at Murphy's voir dire only "20 of the 78 persons questioned were excused because they indicated an opinion as to petitioner's guilt." Murphy v. Florida, 421 U.S. 794, 803 (1975).

Federal appeals courts have also considered the percentage of veniremen expressing bias on the basis of pretrial publicity to be an extremely crucial factor when considering defendants' claims that their sixth and fourteenth amendment rights have been violated by the failure to change venue. For example, in Yount v. Patton, 710 F.2d 956 (3d Cir. 1983), the Third Circuit compared the percentages of veniremen who expressed bias in Irvin, Murphy and several circuit court cases. It found that Yount's panel was more like that in Irvin than that in Murphy, since "three-quarters of the veniremen admitted to an opinion of guilt which they could not set aside." Id. at 970-71. The court then held that a fair trial was impossible in that venue, in view of the pretrial publicity, the voir dire statistics, and the equivocal or negative assurances of impartiality by the selected jurors. Id. at 972.

In the wake of Murphy and Irvin, and circuit court cases such as Yount, supra, there is a pressing need for this Court to articulate the other factors besides the percentages of biased veniremen which must be considered in determining whether the prejudicial effects of massive pretrial publicity have been overcome. The danger of allowing appellate courts to look principally at the percentage of biased veniremen is highlighted by the

Louisiana Supreme Court's disposition of Mr. Willie's case. Looking mainly at the fact that only 10 of the 52 veniremen said they had formed an opinion, the Louisiana Supreme Court held that a fair jury had been selected. State v. Willie, 410 So.2d 1019, 1024 (La. 1982). However, in relying on that calculation, the court overlooked the facts that Mr. Willie was not given the benefit of any doubts when he tried to make challenges for cause; that Mr. Willie was not given any more than the normal number of peremptory challenges; that Mr. Willie's attorney stated that he had been unable to ask sufficiently probing questions to uncover further instances of bias because the questioning was not conducted in a sequestered fashion; that, as defendants' expert had anticipated, at least 2 of the 12 veniremen whom Mr. Willie peremptorily challenged gave false or highly misleading answers which understated their bias;[9] that veniremen who had been challenged upstairs by Vaccaro later ended up downstairs on Willie's jury; and that four of Willie's veniremen heard Vaccaro's attorney indicate that Willie had killed Faith Hathaway.[10]

Undoubtedly, if such factors had been present in Murphy's case and if the pretrial publicity there had been as inflammatory as that here, this Court would have overturned Murphy's conviction notwithstanding the low percentage of biased veniremen. To ensure that state and lower federal courts also realize that mechanical formulas do not suffice, this Court should grant this petition for certiorari. The Court will then have an excellent opportunity to hold that numerous factors besides mathematical percentages must be

---

9. As noted at pages 7-8, supra, one of them was later successfully challenged for cause at Vaccaro's trial.

10. In view of the foregoing facts unique to Willie's trial and the fact that only Willie's jury heard the unconstitutional closing argument which caused the Louisiana Supreme Court to vacate his initial death sentence, the fairness of Mr. Willie's jury is in no way demonstrated by the fact that Vaccaro's jury imposed a life sentence. Hence, the Louisiana Supreme Court's reliance on Vaccaro's sentence, 410 So.2d at 1024, is misplaced.

considered before a court may hold that a fair jury was selected notwithstanding massive, prejudicial pretrial publicity.

III.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THERE IS PREJUDICE AMOUNTING TO A DENIAL OF CONSTITUTIONAL DUE PROCESS UNDER THE STANDARD OF DONNELLY v. DeCHRISTOFORO, 416 U.S. 637 (1974), WHEN A PROSECUTOR ASSERTS IN CLOSING ARGUMENT THAT THE DEFENDANT SHOULD BE GIVEN THE DEATH SENTENCE BECAUSE (a) THE LAW SAYS THAT IF THE JURORS HAD COME TO THE SCENE WHILE THE CRIME WAS BEING COMMITTED, THEY WOULD HAVE BEEN RIGHT TO KILL THE DEFENDANT AND (b) IF THE DEFENDANT IS GIVEN A LIFE SENTENCE, THE JURY WILL BE TELLING HIM THAT HIS LIFE IS MORE VALUABLE THAN THE VICTIM'S

This Court has never articulated the standards that must be applied in determining whether a prosecutor's closing argument in a capital sentencing proceeding denies the defendant due process. The Court's most recent decision in this general area was Donnelly v. DeChristoforo, 416 U.S. 637 (1974), which held that a prosecutor's ambiguous remarks which were followed by the trial court's specific disapproving instructions did not cause prejudice amounting to a denial of due process.

Unfortunately, there have been numerous cases in which prosecutors have made statements during death sentence proceedings which have invited juries to impose the death sentence on the basis of passion or arbitrary factors. E.g., Brooks v. Francis, 716 F.2d 780, 788-90 (11th Cir. 1983); Hance v. Zant, 696 F.2d 940, 951-53 (11th Cir.), cert. denied, 103 S.Ct.3544 (1983); see Maggio v. Williams, ___ U.S. ___, 52 U.S.L.W. 3363, 3364 (U.S. Nov. 7, 1983) (Stevens, J., concurring). Mr. Willie's is yet another such case.

The prosecutor's closing argument in Mr. Willie's second sentencing proceeding contained two unambiguous, highly prejudicial assertions which were never disapproved by the trial judge. As set forth on pages 11-12, supra, the prosecutor first told the jury that the law says they would have been right in killing the defendant if they had come upon him while he was about to commit the crime.

The prosecutor then asserted that the jury would therefore be right to give the defendant the death sentence. The prosecutor finished his argument by saying that (a) the murder victim's life was precious and (b) if the jury gave the defendant a life sentence, it would be telling him that his life was worth more than his victim's, which it was not.

These assertions invited the jury to impose the death sentence on the basis of passion or arbitrary factors. The prosecutor's rationales would require that the death sentence be imposed (1) for every crime which citizens would be warranted in using lethal force to prevent and, independently, (2) whenever a murderer's life is no more valuable than the victim's. The second proposition would require the death sentence for virtually every murder.[11]

Those propositions are, of course, not the law in Louisiana. They were not even the law there at the time when the State imposed mandatory death sentences for certain types of first degree murder, a practice which this Court held unconstitutional in Roberts v. Louisiana, 428 U.S. 325 (1976).

Yet, as noted above, such misstatements of the law and flagrant appeals to impose the death sentence for emotional or arbitrary reasons are being made in numerous cases. Hence, petitioner submits, it is important that this Court address the issue so that prosecutors and judges alike will recognize the urgent need to put an end to such improper arguments.

---

11. As in Vela v. Estelle, 708 F.2d 954, 966 (5th Cir. 1983), the injection of the victim's good character for the sentencing jury's consideration was "highly prejudicial" here. As the Fifth Circuit colorfully stated, "The State dropped a skunk into the jury box." Id.

IV.

THE COURT SHOULD GRANT CERTIORARI TO CONSIDER WHETHER THE LOUISIANA SUPREME COURT MAY CONSTITUTIONALLY UPHOLD A DEATH SENTENCE ON THE BASIS OF A PROPORTIONALITY REVIEW LIMITED TO ONE JUDICIAL DISTRICT UNDER THE STANDARD OF MAGGIO v. WILLIAMS, ___ U.S. ___, 52 U.S.L.W. 3363 (U.S. Nov. 7, 1983), WHERE LIFE SENTENCES, NOT DEATH SENTENCES, HAVE BEEN IMPOSED IN THE ONLY SIMILAR CASES FROM THAT JUDICIAL DISTRICT

In its recent decision in Maggio v. Williams, ___ U.S. ___, 52 U.S.L.W. 3363, 3364 (U.S. Nov. 7, 1983) (per curiam), this Court held that a challenge to a district-wide proportionality review did not warrant a grant of certiorari. However, this case presents a strikingly different issue, which Petitioner submits does warrant a grant of certiorari, viz., may a state constitutionally uphold a death sentence on the basis of a proportionality review encompassing only part of a state when only life sentences have been imposed in that area for similar crimes. That is what occurred here, as discussed on pages 12-13, supra.

Petitioner submits that the death sentence cannot constitutionally be imposed where, as here, the state supreme court limits itself to consideration of cases from one judicial district; it finds life sentences in the only similar cases from that district; and it then says that the death sentence is nevertheless justified in view of the paucity of similar cases in that area. Under such circumstances, the State has simply not shown that it will be acting in a consistent, rational manner in executing the Petitioner. As Justices Stevens and Powell recently stated:

> "A constant theme of our cases -- from Gregg and Proffitt through Godfrey, Eddings, and most recently Zant -- has been emphasis on procedural protections that are intended to ensure that the death penalty will be imposed in a consistent, rational manner." Barclay v. Florida, 103 S.Ct. 3418, 3429 (1983) (Stevens and Powell, JJ., concurring).

Louisiana has utterly failed to provide such protections to this petitioner. He is now subject to execution even though

there has been no finding of consistency. Instead, the Louisiana Supreme Court has declared that there are an insufficient number of similar cases to enable it to make a finding of consistency -- but it is that court's own refusal to look to other districts within the state that has prevented it from making the consistency determination. Petitioner submits that he should not be the fatal victim of the state supreme court's self-imposed impotency.

In any event, this issue is sufficiently similar to that presented by Pulley v. Harris, cert. granted, 103 S.Ct. 1425 (1983), and dissimilar to that presented by Maggio v. Williams, supra, that even if this Court does not grant certiorari, it should defer a decision on this petition pending its decision in Harris.

CONCLUSION

For all the reasons set forth above, the petition for certiorari should be granted.

Dated: November 30, 1983

Respectfully submitted,

RONALD J. TABAK
Hughes Hubbard & Reed
One Wall Street
New York, New York 10005
(212) 709-7735

ATTORNEY OF RECORD

JOHN CHARLES BOGER
16th Floor
99 Hudson Street
New York, New York 10013
(212) 219-1900

ATTORNEYS FOR PETITIONER

R

83-5836

IN FORMA PAUPERIS DECLARATION

United States ~~District Court For The~~ Supreme Court _____ ~~District of Louisiana~~

Robert Lee Willie
(Petitioner)

v.

Louisiana
(Respondent(s))

DECLARATION ~~IN SUPPORT OF~~ REQUEST TO PROCEED IN FORMA PAUPERIS

I, ROBERT LEE WILLIE, declare that I am the petitioner in the above entitled case; that in support of my motion to proceed without prepaying fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to relief.

1. Are you presently employed? Yes ( ) No (X)

   a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer.

   NONE

   b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.

   1980 - $800.00 per Month

2. Have you received within the past twelve months any money from any of the following sources?

   A. Business, profession or form of self-employment? Yes ( ) No (X)

   B. Rent payments, interest or dividends? Yes ( ) No (X)

   C. Pensions, annuities or life insurance payments? Yes ( ) No (X)

d. Gifts or inheritances? Yes ( ) No (X)

e. Any other sources? Yes ( ) No (X)

If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

NONE

3. Do you own cash, or do you have money in checking or savings account?

Yes (✓) No (include any funds in prison accounts.) If the answer is "yes," state the total value of the items owned.

$10.00 prison account

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ( ) No (X)

If the answer is "yes," describe the property and state its approximate value.

NONE

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

NONE

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed On: 12/8/83

Robert Lee Willie
Signature of Petitioner

Sworn to and subscribed before me this 8 day of December 1983 Lucy Hallisky

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $ 4.04 on account to his credit at the Angola LSP institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____ institution _____

DRAWING 4.04

SAVINGS —00—

Robert L Willie #99317

DATE
DEC 07
CERTIFIED

Jacqueline Johnson
Authorized Officer of Institution